



**INCOME TAX**

N. A. SHAH  
**BULLETIN**

**May 2017**

  
N. A. SHAH ASSOCIATES LLP  
Chartered Accountants



### **Executive Summary**

The object clause would not be the conclusive factor to determine that income is to be treated under the head 'income from business and profession', the dominant intention behind the activity is to be considered.

<< *This space has been intentionally left blank* >>

## **Raj Dadarkar & Associates vs Assistant Commissioner of Income-tax**

### **Supreme Court of India - Civil Appeal Nos. 6455 to 6460 of 2017**

#### **Facts:**

- i. The Maharashtra Housing and Developing Authority ('MHADA') had constructed buildings in Mumbai, however, there was a reservation for Municipal retail market on the plot on which MHADA had put up the construction.
- ii. Therefore, MHADA handed over ground floor of the buildings to Market Department of Municipal Corporation Greater Bombay ('MCGB'). The Market Department of MCGB auctioned the market portion on a monthly license basis to run municipal market.
- iii. The assessee was a successful bidder at the auction and was handed over possession of the market portion; whereby the assessee constructed the market area (i.e. shopping centre) thereupon and sub-licensed the same to various persons.
- iv. The assessee offered the receipts collected from the sub-licencees (namely, compensation, leave & licence fees and service charges) in its return of income under the head 'profits and gains from business and profession'. The said treatment was accepted in the course of assessment proceedings.
- v. However, the case of AY 1999-2000 was re-opened, re-computing the said receipts under the head 'income from house property' instead of 'income from business and profession'. Such recomputation was made on the basis that the appellant was "deemed owner" of the said premises as it had acquired the leasehold right for more than 12 years and property tax was also levied on the assessee.
- vi. In the appeal before the Commissioner of Income-tax (Appeals) ['CIT(A)'], assessee's appeal was allowed. On a further appeal, Income Tax Appellate Tribunal ('ITAT') reversed the order of the CIT(A) on the basis of the following:

- ITAT observed that the assessee had let out shops/ stalls for a monthly rent and collected charges for minor repairs, maintenance, water and electricity. As per the terms of allotment, the assessee was required to incur all the expenses.
  - The assessee additionally, collected 20% of monthly rent as service charges (for ward and watch, electricity, water, etc) which were inseparable from basic charges of rent
  - The assessee has bifurcated the rent income and service charges, however, the assessee did not establish that he was engaged in any systematic or organized activity of providing service to the occupiers of the shops/ stalls so as to constitute the receipts from them as business income.
- vii. In an appeal before the High court, assessee's appeal was rejected and the assessee challenged said judgment before Supreme Court.

**Issue:**

- i. Whether the income earned by the assessee from the shopping centre was required to be taxed under the head 'income from house property' instead of the head 'profits and gains from the business or profession' as claimed by the assessee?

**Held:**

- i. The Supreme Court held that merely because there is an entry in the object clause of the business showing a particular object, would not be the determinative factor to arrive at a conclusion that the income is to be treated as income from business.
- ii. It was observed that one has to see as to whether the activity in question was in the nature of business and consequently, it can be said whether the income therefrom is to be treated as business income.
- iii. The Supreme Court further observed that apart from relying on the object clause, the counsel for the assessee did not produce or refer to any sufficient material to show that its entire income or substantial income was from

letting out of the property which was the principal business activity of the appellant.

- iv. In view of the above, the Supreme Court upheld the Bombay High Court's decision and held that the income for the assessee should be taxed under the head 'income from house property'.

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any and all liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400 013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: [info@nashah.com](mailto:info@nashah.com)